

Message Text

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72

ACTION EB-11

INFO OCT-01 ARA-11 ADP-00 SS-14 L-03 H-02 AGR-20 CIAE-00

COME-00 INR-09 LAB-06 NSAE-00 RSC-01 STR-08 TRSE-00

CIEP-02 SAL-01 OMB-01 AID-20 TAR-02 PA-03 PRS-01

SSO-00 CCO-00 NSCE-00 INRE-00 USIE-00 NSC-10 RSR-01

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FM AMEMBASSY MANAGUA

TO SECSTATE WASHDC IMMEDIATE 1111

CONFIDENTIAL MANAGUA 1788

E. O. 11652: GDS

TAGS: EAGR, NU

SUBJECT: EXPORT TAX ON COTTON

REF: (A) MANAGUA 1672; (B) MANAGUA 1752

1. AMB AND EMBOFF MET WITH GEN SOMOZA AFTERNOON MARCH 26 AT HIS REQUEST TO DISCUSS THE PROBLEM CAUSED BY MARCH 13 REGULATION (REF A) WHICH SHIFTED BURDEN OF TAX ON COTTON DELIVERED BUT NOT EXPORTED PRIOR TO JAN 6 FROM THE GROWERS TO BROKERS. THE GENERAL SAID HE HAD MET WITH GROWERS' REPRESENTATIVES EARLIER IN THE DAY AND TOLD THEM PARA 3 OF THE MARCH 13 REGULATION WAS CLEARLY UNCONSTITUTIONAL AND THAT IF ALLOWED TO STAND, IT WOULD CAST DOUBT ON THE VALIDIDITY OF ANY CONTRACTS SIGNED IN NICARAGUA AND ENDANGER THE COUNTRY'S GOOD NAME IN INTERNATIONAL MARKETS. THEREFORE, PARA 3 MUST BE REVISED.

2. THE GENERAL TOLD THE AMBASSADOR THAT HE HAD INSTRUCTED THE MIN OF FINANCE TO REVISE AND TO CONCLUDE IT WITH A SENTENCE STATING: " THE ABOVE DOES NOT CONTRAVENE ANY EXISTING CONTRACT". AS THE GENERAL EXPLAINED IT, THE REVISION WILL MEAN THAT BROKERS WHO HAD CONTRACTS IN FORCE AT THE TIME THE EXPORT TAX WAS IMPOSED, WILL BE ABLE TO PASS THE FULL BURDEN BACK TO THE GROWER IF THE

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CONTRACT SO STIPULATES. THE ONLY REMAINING AREA OF CONTENTION WILL BE WHETHER A CONTRACT FOR WHICH THE COTTON WAS DELIVERED IN FULL BY THE GROWER AND PAID FOR IN FULL BY THE BROKER BEFORE JAN 6, WILL BE CONSIDERED " IN FORCE" OR " COMPLETED" (LIQUIDADA) IF THE COTTON WAS NOT ACTUALLY EXPORTED BEFORE THAT DATE. THE GENERAL SAID THE COURTS WOULD HAVE TO DECIDE THAT ISSUE. HE ADDED THAT THE REVISION WILL BE ISSUED TODAY (MARCH 26) OR TOMORROW.

3. COMMENT: WE BELIEVE THE FOREGOING ARRANGEMENT WILL SHIFT MOST BUT NOT ALL OF THE BURDEN OF THE EXPORT TAX BACK TO THE GROWERS. IT IS DIFFICULT TO GET EXACT FIGURES BUT THE LOCAL REPRESENTATIVES OF US BROKERS WITH WHOM WE HAVE SPOKEN ESTIMATE THAT THEY SHOULD BE ABLE TO COLLECT OVER EIGHTY PERCENT OF THE AMOUNT IN DISPUTE. THE REMAINDER WILL FALL IN THE CATEGORY MENTIONED BY SOMOZA OF CONTRACTS WHICH WERE DELIVERED AND PAID FOR IN FULL BUT NOT EXPORTED BEFORE JANUARY 6. HERE THE BROKERS MAY HAVE A GOOD LEGAL CASE SINCE THE STANDARD CONTRACTS CONTAIN THE FOLLOWING CLAUSE: " ALL EXPENSES, DUTIES AND TAXES REQUIRED TO PLACE THE COTTON FOB ON THE BOAT, INCLUDING DOCKAGE, TAX STAMPS, LOCAL OR FISCAL TAXES AND EXPORT TAXES PRESENT OR FUTURE ... ARE AT THE EXPENSE OF THE VENDOR AND WILL BE DEDUCTED IN THE FINAL PAYMENT (LUQUIDACION)". THE QUESTION IS WHETHER " FINAL PAYMENT" TERMINATES THE CONTRACT AND HERE EVEN THE BROKERS ARE DIVIDED IN THEIR OPINIONS. IN ANY EVENT, IN OUR JUDGEMENT, THIS IS THE BEST SETTLEMENT WE AND THE US BROKERS CAN REALISTICALLY EXPECT.

SHELTON

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